

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

MEDCHOICE RISK RETENTION  
GROUP, INC.,

Plaintiff,

v.

ROBERT G. RAND, M.D. and RAND  
FAMILY CARE LLC,

Defendants.

Case No. 3:16-cv-00418-MMD-VPC

ORDER

**I. SUMMARY**

This insurance coverage dispute involves coverage under a medical professional liability policy (“the Policy”) that Plaintiff Medchoice Risk Retention Group, Inc. issued to Defendants Dr. Robert G. Rand (“Rand”) and Rand Family Care LLC. (ECF No. 1.) Before the Court is the Report and Recommendation (“R&R”) of United States Magistrate Judge Valerie P. Cooke to deny Cyndi and Edward Yenick’s (“Intervenors”), as Special Administrators of the Estate of Michael Yenick, motion to intervene (“Motion”). (ECF No. 35.) The Court has reviewed Intervenors’ objection to the R&R (“Objection”) (ECF No. 39) and Plaintiff’s response (ECF No. 41). For the reasons discussed below, the Court agrees with the Magistrate Judge’s recommendation and adopts the R&R.

**II. RELEVANT BACKGROUND**

On July 12, 2016, Plaintiff initiated this action to seek rescission of the Policy, recoupment of defense cost and other alternative reliefs of non-coverage or a limit on

1 coverage in connection with a wrongful death lawsuit that Intervenor filed against  
2 Defendants in the Second Judicial District Court in and for the County of Washoe (“the  
3 Lawsuit”). (ECF No. 1.) The Court has diversity jurisdiction pursuant to 28 U.S.C. §  
4 1332(a)(1) — Plaintiff is a citizen of Vermont and Defendants are citizens of Nevada and  
5 the amount in controversy exceeds \$75,000 (*id.* at 3.)

6 On August 19, 2016, before Defendants file their response to the Complaint,  
7 Intervenor moved to intervene under Fed. R. Civ. P. 24(b)<sup>1</sup>. Their main argument for  
8 intervention is that Rand is in custody and may not have the motivation or resources to  
9 litigate this case. (ECF No. 10 at 5.) Defendants oppose intervention, disputing the  
10 contention as to their lack of motivation or resources. (ECF No. 16.) Plaintiff similarly  
11 opposes intervention, raising several grounds, including the argument that the Court lacks  
12 jurisdiction to permit intervention if Intervenor seek to bring claims against Defendants.  
13 (ECF No. 18.) Intervenor responded that their purpose for intervening is clear such that  
14 a pleading is unnecessary, but they nevertheless attached a proposed answer in  
15 intervention. (ECF No. 29.)

16 The Magistrate Judge, relying on *Freedom From Religion Foundation, Inc. v.*  
17 *Geithner*, 644 F.3d 836 (9th Cir. 2011), found that because Intervenor are citizens of  
18 Nevada, complete diversity would be destroyed if intervention is permitted. (ECF No. 35.)  
19 Accordingly, the Magistrate Judge recommends denying intervention.

### 20 **III. DISCUSSION**

21 The Magistrate Judge decided the Motion referred to her pursuant to 28 U.S.C. §  
22 636(b)(1)(B) and LR IB 1-4. This Court “may accept, reject, or modify, in whole or in part,  
23 the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1).  
24 Where a party timely objects to a magistrate judge’s report and recommendation, then  
25 the court is required to “make a *de novo* determination of those portions of the [report and  
26 recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). In light Intervenor’s

---

27 <sup>1</sup>Defendants have answered and asserted a number of counterclaims, including  
28 for bad faith and unfair trade practices. (ECF No. 14.)

1 objection, the Court has engaged in a *de novo* review to determine whether to adopt  
2 Magistrate Judge Cooke's recommendation.

3 Intervenor's seek permissive intervention under Fed. R. Civ. P. 24(b). (ECF No.  
4 10.) Rule 24(b)(1)(B) permits a court to allow anyone to intervene who submits a timely  
5 motion and "has a claim or defense that shares with the main action a common question  
6 of law or fact." A movant seeking permissive intervention must satisfy three threshold  
7 requirements: "(1) an independent ground for jurisdiction; (2) a timely motion; and (3) a  
8 common question of law and fact between the movant's claim or defense and the main  
9 action." *Geithner*, 644 F.3d at 843 (quoting *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d  
10 470 (9th Cir. 1992)). But a district court has discretion to deny permissive intervention  
11 even if the applicant satisfies the threshold requirements. *Donnelly v. Glickman*, 159 F.3d  
12 405, 412 (9th Cir. 1998). In exercising its discretion, a court should consider whether  
13 intervention will unduly delay or prejudice the original parties, whether the applicant's  
14 interests are adequately represented by the existing parties, and whether judicial  
15 economy favors intervention. *Venegas v. Skaggs*, 867 F.2d 527, 530-31 (9th Cir. 1989).

16 The Magistrate Judge found that permissive intervention would destroy complete  
17 diversity because Intervenor's and Defendants are Nevada residents. (ECF No. 35 at 3.)  
18 Relying on *Geithner*, the Magistrate Judge concluded that Intervenor's have not met the  
19 jurisdictional requirement. See *Geithner*, 64 F.3d at 843 ("The jurisdictional requirement  
20 also prevents permissive intervention from being used to destroy complete diversity in  
21 state law actions."). Intervenor's argue in their Objection that intervention would not affect  
22 the Court's diversity jurisdiction, nor allow Intervenor's to gain a federal forum for their  
23 state law claims over which this Court lacks jurisdiction because they seek to align  
24 themselves with Defendants, not prosecute their state law claims against Defendants.  
25 (ECF No. 39 at 4-5.) Intervenor's filed with their reply brief in support of their Motion a  
26 proposed answer in intervention. (ECF No. 29-1.) The Court accepts Intervenor's  
27 contention that because they would be litigating alongside Defendants and against

28 ///

1 Plaintiff, Intervenor would in effect be intervenor-defendants in this case and their  
2 intervention would not destroy diversity jurisdiction.


3 However, the Court nevertheless finds that permissive intervention should be  
4 denied. Intervenor argue that they have a significant interest in being heard on the issues  
5 of coverage, which they need to protect in light of Rand's custody status and his  
6 motivation and resources to litigate this case. (ECF No. 10 at 5.) While Intervenor  
7 understandably have an interest in ensuring that coverage under the Policy extends to  
8 the Lawsuit, their interests are adequately represented by Defendants, who have a  
9 significant interest in ensuring coverage is available and that Plaintiff continue to defend  
10 the Lawsuit.<sup>2</sup> In fact, Defendants dispute the contention that Rand may not have the  
11 desire or means to litigate this case because of his custody status. (ECF No. 16.) As  
12 Defendants pointed out, they not only intend to defend, but have asserted counterclaims.  
13 Under these circumstances, permissive intervention would unnecessarily encumber the  
14 litigation and impede judicial economy.

#### 15 **IV. CONCLUSION**

16 The Court notes that the parties made several arguments and cited to several  
17 cases not discussed above. The Court has reviewed these arguments and cases and  
18 determines that they do not warrant discussion as they do not affect the outcome of the  
19 Motion and Objection.

20 It is therefore ordered that the Report and Recommendation of United States  
21 Magistrate Judge Valerie P. Cooke (ECF No. 39) is adopted in full. The motion to  
22 intervene (ECF No. 10) is denied.

23 DATED THIS 15<sup>th</sup> day of March 2017.

24   
25 \_\_\_\_\_  
26 MIRANDA M. DU  
27 UNITED STATES DISTRICT JUDGE

27 \_\_\_\_\_  
28 <sup>2</sup>Plaintiff alleges it is defending Defendants from the Lawsuit under the Policy.  
(ECF No. 1 at 9.)